



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA- 173874

PRELIMINARY RECITALS

On April 21, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), to challenge a decision by the Division of Health Care Access and Accountability (Division or DHCAA) regarding Medical Assistance (MA). The hearing was held on May 10, 2016, by telephone.

The issue for determination is whether the Division correctly denied a prior authorization request for speech and language therapy (SLT) for the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 W. Wilson Street, Room 651
Madison, WI 53701-0309

By written submission of [REDACTED] MA
CCC-SLP

Division of Health Care Access and
Accountability
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Nancy Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County. She is certified for MA.
2. On February 7, 2016, a prior authorization request (#.. [REDACTED]) was submitted on the petitioner's behalf for SLT services. Services were requested at the level of once weekly, for 20 weeks, beginning February 9, 2016. Following a re-submission, the Division issued written notice of denial of the request on March 17, 2016.
3. The Division's basis for denial of the requested service was that the petitioner receives sufficient SLT services through her school to meet her needs.
4. The petitioner, age five, lives in a private residence with her parents and a sibling. Her diagnoses include autistic disorder and phonological disorder. She has age level gross motor skills and grasps most age-appropriate early learning concepts. She began receiving ABA behavioral therapy for her autism via a 30-hour weekly regimen through provider WEAP, beginning in March 2013. The child also began SLT through a WEAP speech therapist ([REDACTED]) in March 2013. She also receives SLT at school. Currently, the child has impaired expressive language skills and very impaired articulation.
5. The petitioner had two front teeth removed and replaced with prosthetic teeth shortly before age two. In 2015, the two prosthetic teeth were removed due to abscesses.

The petitioner has progressed while receiving [REDACTED] therapy in combination with the ABA therapist and the home program. She is able to pronounce the consonants /m, h, w, p, b, d, f, n/ in isolation, but struggles with final consonant deletion and fronting in words. The petitioner has continued to receive SLT services from [REDACTED] during the pendency of this appeal.
6. The provider's services have and will include coaching for ABA therapist and home follow-up. The private provider's goals on the prior authorization request in question are as follows:
 1. *E will reduce the occurrence of final consonant deletion by producing final consonants: /m, n, p, t/ with 80% accuracy in carrier phrases across 2 cycles.*
 2. *E will reduce the occurrence of initial consonant deletion by producing initial consonants /n, t, p, b, d/ with 80% in imitation across 2 cycles.*
 3. *E will reduce the occurrence of velar fronting by producing velar plosives /k, g/ in initial word position and /k/ in final word position with 60% accuracy in imitation across 2 cycles.*
 4. *E will reduce the occurrence of cluster reduction by producing 2-consonant sequences /sp, st, sk, sm, sn/ in initial word position in carrier phrases with 80% accuracy in imitation across 2 cycles.*
 5. *E will produce 2-consonant sequences /ps, ts/ in final word position with 60% accuracy in imitation across 2 cycles.*
 6. *E will reduce the occurrence of liquid gliding by approximating liquids /l, r/ without gliding to /w, j/ in 60% of imitated opportunities across 2 cycles.*
 7. *E will reduce the occurrence of palatal fronting by producing palatal sounds /sh, ch, j/ in 80% of imitated opportunities across 2 cycles.*
7. Per DPI guidance, 90% of females have not acquired the following phonemes and word-initial cluster by age five: sp, st, sk, sm, sn, sh, ch, j.

8. The petitioner also receives SLT at school during the school year. The school's SLT goals are as follows:

1. E will use words and 3-4 word phrases to communicate a variety of pragmatic functions including : greeting, commenting, requesting, refusing, and labeling in structured play activities with decreasing cues/prompts in 3/5 opportunities (baseline: emerging use of 2-3 word combinations to communicate).
2. E will increase social skills by engaging at least 5 verbal back and forth exchanges with a peer, respond to greetings and departures, share and take turns with decreasing adult prompting can accept social redirection; 80% of all opportunities.
3. E will increase her speech intelligibility to about 80% by producing final consonants /k, g/ in all word positions and initial /s/ blends in words and sentences in structured activities in 8/10 trials (baseline: Intelligibility in known contexts-60%).

School therapy is provided for 60 minutes weekly for three weeks each month, and includes no parent coaching.

9. [REDACTED] and the school therapist have coordinated their services.

DISCUSSION

Speech and language therapy (SLT), as defined at Wis. Admin. Code §DHS 107.18(1), is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code §DHS 107.18(2). In determining whether to approve such a therapy request, the Division employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be a medical necessity, appropriate, and an effective use of available services. *Id.* The Division argues that the authorization criteria have not been satisfied for the reason given in Finding #3 above. In the absence of evidence to the contrary, I will assume that the therapist intended to spend equal amounts of time on all unmet goals herein. The burden of proving the medical need for the service rests with the petitioner, by a preponderance of the credible evidence.

Primarily, the Division argued that the petitioner receives SLT services through her school, so there is not a need for the requested therapy, as there are other available services that can be effectively and appropriately used. *See*, §DHS 107.02(3)(e)7. This generic standard for service approval is sometimes “short-handed” to a test of “duplication” of services. However, exact duplication of goals is not what is required by this standard. Rather, this reviewing standard causes the reader to consider whether, if the patient is taking advantage of available, appropriate services offered in other venues, the requested private therapy is still needed. In this case, the petitioner's school SLT therapy Goal “3” (relating to /k, g, s/ consonant intelligibility) appears to be working on the same end result as the provider's Goal #3 (relating to /k, g/.

The school's other goals focus on using phrases to communicate pragmatic needs and to improve social engagement. This is in contrast to the provider's goals, which all deal with articulation of specific sounds. This Judge does not see overlap on these goals. Additionally, I do not believe that the proffered school services alone are sufficient to meet the needs of a young, autistic child. Her need for SLT is high, and her

likelihood of making large gains with additional therapy is also high due to her age. It is generally accepted that early interventions are the most effective for autistic children.

The Division also expressed a concern that [REDACTED] was not coordinating care with the WEAP therapist and the school speech therapist. Coordination between such providers is required as a condition of prior authorization approval. [REDACTED] and the WEAP therapist testified that they do collaborate and coordinate care weekly, on an informal basis. [REDACTED] also credibly testified that she did coordinate care with the child's first school therapist, who is no longer on the case. She did not document that coordination because the family had private insurance to cover the SLT cost at the time. The school coordination documentation submitted with the authorization request pertains to the successor therapist at school. The petitioner's evidence was adequate to persuade me that coordination of service is occurring.

Finally, the Division persuasively argues that SLT is not a medical necessity for speech goals that are beyond expectations for a child aged 4 ½ to 5, such as the petitioner. The Division references guidance from DPI in Attachment 3 to its April 29 position letter. That chart indicates that 90% of females do not make the sounds sp, st, sk, sm, sn, sh, ch, or j as a word-initial cluster. *See, Speech and Language Impairments Assessments and Decision Making*, p. 62, viewable at the DPI website, <https://dpi.wi.gov/sites/default/files/imce/sped/pdf/slguide.pdf>. Thus, petitioner's private goals #4 and #7, which call for production of those sounds, appear premature.

To conclude, the existence of school therapy SLT Goal "3" creates a presumption that the school's therapy is an available, appropriate service that covers the same ground as the private provider's Goal #3 in this case. Thus, MA-paid therapy is not additionally needed for the petitioner for Goal #3. Additionally, because provider Goals #4 and #7 appear premature for a child of this age, therapy to meet those goals is not a medical necessity. Because the remaining four permissible, private goals constitute 57% of the requested (7) private goals, I will authorize 57% of the requested sessions (*i.e.*, 11 sessions).

[Note to Petitioner: Your provider will not receive a copy of this Decision. In order to have the service requested here, you must provide a copy of this Decision to WEAP. The provider must then submit a new prior authorization request to receive the approved service.]

CONCLUSIONS OF LAW

1. The petitioner does not require additional MA-paid SLT for Goal #3, because she is receiving appropriate treatment to reach that goal through the use of her school SLT services.
2. The provider's Goals #4 and #7 are not a medical necessity for the petitioner at this time, as they are developmentally premature.
3. This autistic petitioner may appropriately be given additional SLT for the provider's Goals #1, #2 #5, and #6.

NOW, THEREFORE, it is

ORDERED

That Wisconsin Early Autism Project/WEAP is hereby authorized to provide the petitioner with **11** of the 20 requested speech and language therapy sessions and to submit its claim, along with a copy of this

Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

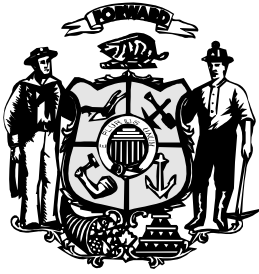
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of July, 2016

\s _____
Nancy Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 18, 2016.

Division of Health Care Access and Accountability